Nos. 49 & 50 & 51.

IN THE SUPREME COURT OF THE UNITED STATES.

Petition for Rehearing.

OCTOBER TERM, 1897.

Filed May 9, 1898.

No. 49.

CONSTANTINE J. SMYTH, Attorney General; WILLIAM F. PORTER, Secretary of State; JOHN F. CORNELL, Auditor of Public Accounts; JOHN B. MESERVE, State Treasurer; JACOB V. WOLFE, Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, composing the State Board of Transportation; and JAMES C. DAHLMAN, JOSEPH W. EDGERTON and GILBERT L. LAWS, Secretaries of said Board, Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, and THE KANSAS CITY AND OMAHA RAILROAD COMPANY, Appellees.

No. 50.

SMYTH, et al.,

vs.

SMITH, et al.

No. 51.

SMYTH, et al.,

vs.

HIGGINSON, et al.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 49.

CONSTANTINE J. SMYTH, Attorney General; WILLIAM F. PORTER, Secretary of State; JOHN F. CORNELL, Auditor of Public Accounts; JOHN B. MESERVE, State Treasurer; JACOB V. WOLFE, Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, composing the State Board of Transportation; and JAMES C. DAHLMAN, JOSEPH W. EDGERTON and GILBERT L. LAWS,, Secretaries of said Board, Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, and THE KANSAS CITY AND OMAHA RAILROAD COMPANY, Appellees.

No. 50.

SMYTH, et al.,
vs.
SMITH, et al.

No. 51.

SMYTH, et al.,
vs.
HIGGINSON, et al.

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of the above named appellants respectfully showeth:

That your petitioners find themselves much aggrieved by the opinion and judgment of this court announced by your honors in the above entitled cases on the 7th day of March, 1898, whereby it was, among other things, ordered and adjudged that the entire decree in this case entered in the court below be affirmed by this court; your petitioners submit that so much of the decree entered in the court below is erroneous as prohibits the appellee railway companies from reducing their rates of charges for hauling freight locally below what said rates were when said decree was entered on the 23rd day of November, 1894. So much of said decree as is necessary to show this point is here set out, that is to say: "That the said railway company be perpetually enjoined and restrained from making and publishing a schedule of rates to be charged by it for the transportation of freight on and over its road in this State from one point to another therein, whereby said rates shall be reduced to those prescribed by the Act of the Legislature of this State so-called in the bill filed therein 'House Roll 33,' and entitled 'An act to regulate railroads, to classify freights, to fix reasonable maximum rates to be charged for the transportation of freight upon each of the railroads in the State of Nebraska, and to provide penalties for the violation of this Act, approved April 12, 1893, AND BELOW THOSE NOW CHARGED BY SAID COMPANY."

Your petitioners respectfully show that so much of said decree as appear in these words: "AND BELOW

THOSE NOW CHARGED BY SAID COMPANY," should not be affirmed by this court, but should be eliminated from said decree for the following reasons:

1. By said decree the Railway Companies, appellees herein, are prohibited not only from putting into force the rates fixed in the maximum rate bill, but are also prohibited from reducing their rates below what they were when said decree was signed in 1894.

2. The appellees did not by any allegation in their bills in these cases allege that the rates which they were then charging were reasonable and that to reduce said rates would be unreasonable, nor does any part of the prayer in any of the bills filed by said appellees ask for any relief with respect to said last mentioned rates.

3. No evidence was taken or offerel with respect to the reasonableness or unreasonableness of the rates in force when said decree was signed, or when said bills were filed.

4. The rates in force when said bills were filed and when said decree was signed did not constitute one of the subjects of investigation in this case.

5. Conditions may never be such that the rates fixed in the maximum rate bill would be reasonable under your honors' decision, THEREFORE, if the decree is not modified so as to eliminate from it the words: "AND BELOW THOSE NOW CHARGED BY SAID COMPANY," the State can never compel the railway companies to reduce, even in the slightest degree, any of the rates in force when said decree was signed. The part of the decree

complained of is without any allegation or proof to support it and was, your petitioners believe, inadvertantly incorporated in the decree.

6. Your petitioners may not apply to the trial court for the modification of said decree in the particular herein mentioned, and hence unless your honors grant a rehearing and modification as prayed for by your petitioners they will be without relief, greatly to the injury of the State of Nebraska.

WHEREUPON your petitioners pray that your honors will be pleased to vouchsafe a rehearing of this cause and a modification of said decree, so that there will be eliminated therefrom the part hereinbefore objected to. And your petitioners will ever pray.

C. J. SMYTH,
Attorney General.

I certify that I have examined the case referred to in the foregoing petition and am of opinion that there is error in the decree and judgment in the particulars specified in said petition.

C. J. SMYTH,
Of Counsel.

Nos. 49, 50 & 51.

Sup. Ct. Motion for Rehearing.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

Filed May 19, 1898.

NO. 49.

CONSTANTINE J. SMYTH, Attorney General; WILLIAM F. PORTER, Secretary of State; JOHN F. CORNELL, Auditor of Public Accounts; JOHN B. MESERVE, State Treasurer; JACOB V. WOLFE, Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, composing the State Board of Transportation; and JAMES C. DAHLMAN, JOSEPH W. EDGERTON, and GILBERT L. LAWS, Secretaries of said Board, Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, AND THE KANSAS CITY AND OMAHA RAILROAD COMPANY, Appellees.

No. 50.

SMYTH, et al.,

vs.

SMITH, et all.

No. 51.

SMYTH, et al.,

vs.

HIGGINSON, et al.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

NO. 49.

CONSTANTINE J. SMYTH, Attorney General; WILLIAM F. PORTER, Secretary of State; JOHN F. CORNELL, Auditor of Public Accounts; JOHN B. MESERVE, State Treasurer; JACOB V. WOLFE, Commissioner of Public Lands and Buildings, Officers of the State of Nebraska, composing the State Board of Transportation; and JAMES C. DAHLMAN, JOSEPH W. EDGERTON, and GILBERT L. LAWS, Secretaries of said Board, Appellants,

vs.

OLIVER AMES, OAKES AMES, FRANK M. AMES, WILLIAM POWELL MASON, E. PIERSON BEEBE, CHARLES J. MERRILL, CHARLES F. CHOATE, UNION PACIFIC RAILWAY COMPANY, THE ST. JOSEPH AND GRAND ISLAND RAILROAD COMPANY, THE OMAHA AND REPUBLICAN VALLEY RAILROAD COMPANY, AND THE KANSAS CITY AND OMAHA RAILROAD COMPANY, Appellees.

No. 50.

SMYTH, et al.,

vs.

SMITH, et all.

No. 51.

SMYTH, et al.,

vs.

HIGGINSON, et al.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The supplemental petition of the above named appellants respectfully showeth:

1. At the time of drawing the original petition for rehearing it was thought that the decrees in the above cases were identical, but it has been found upon examination that they are not. The words which we asked in the original petition to have eliminated appear in No. 51, the case of *Smyth, et al vs. Higginson, et al.*

The words bearing upon the same point in *Smyth, et al vs. Smith, et al,* No. 50, which we desire to have eliminated are as follows:

"And below those now charged by said Companies or either of them."

The words upon the same point in *Smyth et al vs. Ames et al,* No. 49, which we desire to have eliminated are as follows:

"And below those now charged by said Companies or either of them or their Receivers."

The objections to the words quoted from the decree in Smyth *et al* vs. Ames *et al,* and Smyth *et al* vs. Smith *et al,* and the reasons on which those objections rest are the same as those with respect to Smyth *et al* vs. Higginson *et al,* No. 51, which are set out in the original petition.

In addition to the reasons urged in the original petition, we beg to suggest this one; if the Legislature should determine to pass a new act fixing maximum rates which would reduce the rates now charged by the Railroad Companies 5 per cent. instead of 29½ per cent. as was done by the act just declared unconstitutional, such an act, although most reasonable, could not

be enforced against the Railroad Companies because they are restrained from reducing their rates below what they were when the decrees were signed.

THE DECREES SHOULD BE MODIFIED IN ANOTHER RESPECT.

2. There is another provision in each of said decrees which your petitioners submit should be modified. It is as follows: "And particularly from reducing its present rates or charges for transportation of freight to those prescribed by said Act."

By this provision the appellee Railroad Companies are restrained from reducing, and the appellants are restrained from taking any steps to have reduced, the rate on any one article fixed in the act declared to be unconstitutional. While all the rates in the act when taken as a whole are unjust under the decision of this court, it does not follow that each rate is unjust; hence the State should not be denied the right to compel the Railroad Companies to reduce one, or two, or more of their rates to a point even below the rates named in the act if to do so would not be to fix an unreasonable rate. For this reason your petitioners submit that the scope of the DECREE should be LIMITED to the ACT and the RATES therein named WHEN TAKEN AS A WHOLE.

It was upon the effect of this act as A WHOLE that the court passed, and not upon the effect of any one particular rate. The Board of Transportation may think it reasanable and just to reduce some of the rates now charged by the Railroad Companies to a point even below that named in the act declared to be void, and to do so might not have such an effect upon the earnings

of the Railroad Companies as to render the rate unreasonable. We think it was not the purpose of the decrees in these cases to restrain the State Board of Transportation from putting such a rate into force, and hence do we think that the decree should be limited in accordance with the suggestion made.

WHEREUPON, your petioners pray that your honors will be pleased to vouchsafe a rehearing of this case and a modification of said decree, so that the objections made in the original petition for rehearing and in this supplemental petition may be removed. And so your petitioners will ever pray.

C. J. SMYTH,
Attorney General.

I certify that I have examined the case referred to in the foregoing supplemental petition and am of opinion that there is error in the decree and judgment in the particulars specified in said petition.

C. J. SMYTH,
Of Counsel.

I hereby accept service of a copy of the within supplemental petition on this 13th day of May, 1898.

J. M. WOOLWORTH,
Solicitor for Appellees and of Counsel.